

May 24, 2007

Chairman Bischoff called the meeting of the Union Township Planning Board/Board of Adjustment to order at 7:05 p.m. The Sunshine Statement was read.

Members Present: Mr. Mazza, Mr. Martin, Mr. Brandt, Mr. Lukasik, Mr. Kirkpatrick,
Mr. Walchuk, Mr. Taibi, Mr. Scott, Mr. Bischoff

Members Absent: Mrs. Nargi

Others Present: Atty. William Sutphen, Carl Hintz, Rick Roseberry, Steven Bolio,
Atty. Judy Babinski, Glenn Scherer, Robert Fallone, Atty. Paul
Schneider, Atty. Douglas Janacek, Kenneth Fears, Louis Goodfriend
Michael Jovishoff, David & Cynthia Case

Mr. Bischoff announced that the June 12th Workshop meeting would need to be rescheduled due to a conflict with the Environmental Commission Meeting. Board members indicated they would be available on June 19th.

Case: Block 17, Lot 2, Lakeview Lane: Extension of Time: Atty. Sutphen gave a brief overview of the application. He said there is litigation which precludes the Cases from proceeding with the development of the property and recording of deeds. Mr. Sutphen felt it was reasonable for the Board to grant the Extension. Mr. Scott asked if the extension could be granted for an indefinite time since the Cases have no control over the litigation. Atty. Sutphen said there must be a time limit.

Mr. Scott made a motion to grant a one-year extension of the minor subdivision. Mr. Brandt seconded the motion.

Vote: Ayes: Mr. Scott, Mr. Brandt, Mr. Mazza, Mr. Martin, Mr. Lukasik,
Mr. Kirkpatrick, Mr. Walchuk, Mr. Bischoff

Lookout Pointe: Block 11, Lot 8, Rupell Road & Bank Street: Memorialization of Resolution #2007-001: Atty. Sutphen gave a brief overview of the application. He said Toll was asked to provide proof that deed restrictions containing conservation restrictions had been established. Mr. Sutphen said Atty. Bisgaier provided copies of deeds that referenced the conservation easements, as well as metes and bounds descriptions. Mr. Bisgaier also included copies of Homeowners' Association Documents that had been reviewed and approved by the Township Attorney. Atty. Sutphen felt Toll had met all requirements requested by the Board.

Mr. Bischoff asked for a motion. Mr. Kirkpatrick made the motion to memorialize the Resolution. Mr. Lukasik seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Lukasik, Mr. Martin, Mr. Walchuk, Mr. Taibi,
Mr. Bischoff

Dickison: Block 25.01, Lot 4, 5 Fox Chase Turn: Memorialization of

Resolution #2007-003: Atty. Sutphen gave an overview of the application for a Variance for a Second Driveway Access. Mr. Sutphen said the Board was aware of the steepness of the slope of the driveway. Therefore, a condition of approval was that curbing with appropriate openings be installed along the driveway and that runoff shall not flow onto Fox Chase Turn. The construction of the driveway and curbing is subject to the review and approval of the Township Engineer.

Mr. Bischoff asked for a motion. Mr. Kirkpatrick made the motion to memorialize the Resolution. Mr. Scott seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Scott, Mr. Mazza, Mr. Martin, Mr. Lukasik,
Mr. Bischoff

Scherer: Block 15, Lots 10, 11, 22, 24 & 52: Baptist Church Road: Issue of

Completeness: Atty. Judy Babinski said her client is seeking access to subject property by a private road (Williamson Lane). Access from Baptist Church Road would be a hardship because of extreme environmental restrictions. Steve Bolio, Ferriero Engineering, gave an overview of Paul Ferriero's letter dated May 17, 2007. Applicant is proposing a single-family dwelling and barn. Mr. Ferriero recommended deeming the application incomplete since the plans do not show proposed grading, soil erosion sediment control, mitigation of potential drainage impacts, etc. Mr. Bolio would like to see a more detailed design in order to make a more informed review. He also said the property is in the Highlands and it is not clear whether it would be exempt. Mr. Bolio said the L.O.I. has expired. He recommended that be updated. Mr. Bolio recommended that several waivers from the checklist be granted. He would like to see a breakdown of impervious coverage and cut outs along the driveway for maneuverability of emergency access vehicles. Atty. Sutphen emphasized why applicant was in front of the Board. Mr. Sutphen said a variance is being sought to access by a private road because access by Baptist Church Road would entail unnecessary hardship because of wetlands, steep slopes, etc. He also said that access to the building by emergency vehicles was of utmost importance. Mr. Sutphen said the Board could request applicant amend plans and submit proposed driveway with appropriate engineering standards or they could direct that a building permit be issued with a condition that the Township Engineer approve the driveway layout, as well as the approval of outside agencies. The Board could request applicant to return to the Board with the amended plans prior to taking action.

Mr. Bischoff asked Mr. Hintz for questions. Mr. Hintz said he had none. Mr. Scott asked if the waivers could be granted for completeness purposes only and ask applicant to submit amended plans and testimony on the driveway as part of the Hearing process. Atty. Sutphen said "Yes". Mr. Kirkpatrick indicated he would like more information pertaining to environmental issues. Mr. Scott said the Board could not require an L.O.I. for purposes of completeness. He also said septic is not within the Board's jurisdiction. Mr. Kirkpatrick asked about the Williamson Lane access. Atty. Sutphen said a Title Search established that applicant has access.

Mr. Scherer offered his opinions about the environmental issues. Mr. Walchuk recommended that Mr. Ferriero's and Mr. Kirkpatrick's concerns be addressed.

Mr. Scott made a motion to deem the application complete, granting waivers for completeness purposes only, with the understanding that engineering details pertaining to access be considered at the Public Hearing. Mr. Lukasik seconded the motion.

Vote: Ayes: Mr. Scott, Mr. Lukasik, Mr. Martin, Mr. Taibi, Mr. Bischoff

Nays: Mr. Mazza, Mr. Brandt, Mr. Kirkpatrick, Mr. Walchuk

Atty. Sutphen said applicant had advertised for the Public Hearing tonight. Mr. Sutphen said proper notification had been made. He suggested that a date be established for the Hearing and applicant would not have to renote. Atty. Sutphen reviewed the Notice Documents and found them to be order, giving the Board jurisdiction to hear the matter. It was decided to adjourn the Hearing until the June 19th, 2007 Workshop, at 7:00 p.m. No further notice will be required.

Fallone Properties, LLC: "Renaissance", Block 22, Lot 34, Perryville Road:

Mr. Bischoff said the Fallon matter was adjourned until July 26, 2007.

Pilot Travel Centers, LLC: Blok 11, Lot 24.03, 68 Route 173: Atty. Paul Schneider, representing applicant, said he understood objector's witnesses would be heard tonight. Mr. Scott said that was correct. He said Atty. Janacek had reserved the right to question Pilot's Planner, Mr. McDonough. Atty. Janacek said he would like to have his three witnesses present testimony. He thought their testimony would take an hour or less, depending upon questions. Mr. Janacek indicated Mr. McDonough would not be needed. Atty. Janacek's witnesses, Ken Fears, Engineer, Michael Jovishoff, Planner and Louis Goodfriend, Acoustical Engineer, were sworn by Atty. Sutphen.

Mayor Frank Mazza recused himself as a member of the Governing Body. Mr. Fears presented his credentials. He was accepted as an expert for traffic and transportation engineering. Mr. Fears was asked by INO Therapeutics to examine Pilot's application for a use variance, bulk variances and site plan approval from a traffic perspective. He had visited the site and reviewed Joseph Staigar's Traffic Report. Mr. Fears had also visited the Pilot site at Bloomsbury and noted the backup of traffic there. Mr. Fears said Mr. Staigar had used the Bloomsbury site as the foundation for his report. Mr. Fears did not believe that report to be a reliable foundation and therefore, couldn't rely upon Mr. Staigar's conclusions. Mr. Fears said he thinks it is likely the trips at the Union Site will be higher than at Bloomsbury. Mr. Fears had prepared a report dated February 26, 2007. It was marked INO-1.

Atty. Schneider asked Mr. Fears if his testimony was that capacity at the proposed site was greater than that at the Bloomsbury site. Mr. Fears said "No", it appears there would be more pumps and more parking spaces. Mr. Fears said the amount of traffic would depend on the market. He had not, however, done a study of the market area. Mr. Fears had not taken any measurements or traffic counts at the Union site and had no idea as to the capacity there.

Mr. Kirkpatrick understood that Mr. Staigar had relied on two sources of information; the Bloomsbury site and one in the Midwest. He asked Mr. Fears if he made any conclusions about those sources of data. Mr. Fears said he spoke to a representative (Rob Siley) of the NJDOT who advised him that there was only one site and he wasn't told where it was. Mr. Siley said he would like more information as it applied to other sites in N.J. Mr. Fears indicated representative sites should be along the Interstate 78 & 80 Corridors to be relevant to the Union Township property. Mr. Kirkpatrick asked Mr. Fears if a reduction in overnight parking spaces would reduce the a.m. peak. Mr. Fears did not believe there would be a significant reduction since truckers leave at different times.

Mr. Brandt asked Mr. Fears about his comment about market conditions. Mr. Brandt wanted to know how many times he would visit a site if he was contracted to make an evaluation and study. Mr. Fears said it would depend upon the purpose of the study.

Aleta Lambert, 10 Grove Farm Road, asked Mr. Fears about a proposal to change the timing on the traffic light on 173 and the potential impact on nearby traffic. Mr. Fears explained. Mr. Scott asked Mr. Fears if he had an opinion as to whether Mr. Staigar's Report should have included the Exit 12 Eastbound Lanes. Mr. Fears indicated he did not know the foundation number of trip generations expected for the site and therefore did not have an opinion. Mr. Kirkpatrick asked Mr. Fears if he had examined the Pilot site plan. He had not. Mr. Kirkpatrick asked if he had examined the entrances. Mr. Fears said he looked briefly at the site and would not be able to comment on circulation, stacking, turning movements, clearance, etc.

Matthew Mulhall, Country Acres Drive, said testimony had been given that eastbound truck traffic on I-78 would not be exiting at Exit 12 because there is a Pilot at Bloomsbury. Therefore, a study was not done. Mr. Mulhall asked if traffic coming from both eastbound and westbound directions should have been looked at. Mr. Fears told Mr. Mulhall his question was excellent. He said Pilot's study was asked on the assumption that their customers are dedicated.

Atty. Schneider asked Mr. Fears if the current use of the Union facility as a Pilot Travel Center would be a reasonable predictor of trip generation. Mr. Fears said that without everything in place (parking spaces, fuel pumps, etc.) he said "No". Mr. Schneider asked if, from a traffic perspective, would it be better if westbound traffic using the Union site

exited at Exit 13, rather than Exit 12? Mr. Fears said that he would have to know traffic volumes and relative movements of both interchanges in order to offer an opinion. Therefore, Mr. Fears said “No”.

Atty. Janacek asked Mr. Fears about the information Mr. Staigar referenced as the basis for a Highway Access Permit. Mr. Fears said Mr. Staigar did not rely upon that information for his report to the Planning Board. Mr. Janacek asked Mr. Fears about trip generation numbers and their unreliability, indicating there are on-site and off-site issues, such as how intersections function, what intersections should be studied and levels of service. Was that correct? Mr. Fears said “Yes”.

Atty. Janacek said his next witness was Louis S. Goodfriend. Mr. Goodfriend presented his credentials. He was accepted as an expert in acoustical engineering. Mr. Goodfriend prepared a report dated March 21, 2007. The report was marked INO-2. Mr. Janacek wanted the report introduced as evidence. Atty. Schneider objected. He said testimony should be heard so the Board could judge what Mr. Goodfriend had to say. Mr. Scott sustained the objection.

INO Therapeutics asked Mr. Goodfriend to make a determination of the impacts, from an acoustical perspective, if the proposed Pilot application was approved. Mr. Goodfriend indicated that noise levels would exceed N.J. Noise Control Regulations. He said the regulations are not enforced unless the property has a residence. Mr. Goodfriend said the Planning and Zoning Board has no regulatory authority. All they can do is to not allow residences. Atty. Janacek asked Mr. Goodfriend if his testimony is that trucks generate noise and if there are more trucks on the road, there would be more impact from noise on that road. Mr. Goodfriend said that was correct. Atty. Janacek asked to reintroduce Mr. Goodfriend’s March 21, 2007 report into evidence as INO-2. Atty. Schneider objected. Mr. Scott sustained the objection. Mr. Goodfriend explained information included in the Tables listed in his report, including sound levels for day and night time. The noise source including idling and maneuvering trucks, those trucks entering the site and trucks traveling along Route 173 and surrounding properties.

Sound level measurements were taken on February 28, 2007. The Chart showing those measurements included a number of passing trucks, a police siren and a horn. Another Chart shows the sound level of a horn blowing simultaneously with a truck passing in relationship to the night time regulation of the N.J. Noise Control Regulation (NJNCR). It indicates the truck horn is louder than permitted by the NJNCR.

Atty. Janacek asked again to offer Mr. Goodfriend’s Report into evidence as INO-3. Mr. Schneider had no objection as to the chart and graphs from that Report being marked, whereupon Mr. Scott announced they would be marked INO-3. Mr. Schneider said the witnesses’ testimony should stand.

Mr. Scott announced that a recess would be taken. (9:05 to 9:17 p.m.)

Atty. Schneider asked Mr. Goodfriend to clarify that State Noise Control Regulations only apply to residences. Mr. Goodfriend said that was correct. Mr. Schneider displayed Exhibit A-23, an aerial of the Pilot Union site. He asked Mr. Goodfriend about zoning of lands north and east of the proposed site. Mr. Goodfriend said he did not know who owned the lands. Atty. Schneider told Mr. Goodfriend that the State owned those lands. Would that have any bearing on his view of the likelihood of a residence being built there? Mr. Goodfriend said he had no idea what a future change in ownership might be. Atty. Schneider asked about a change of use? Mr. Goodfriend said "Or change of use". Mr. Schneider asked about the noise measurements that were taken at the subject property and Pilot's Bordentown site. The Bordentown site was selected because of access. Mr. Goodfriend said it is difficult to find sites where measurements can be taken. Bloomsbury was not selected because it was not felt to be an appropriate site. Mr. Goodfriend explained how and where the noise measurements were taken. He did not take the measurements. Mr. Goodfriend said he had visited the Pilot site in Union three or four times.

Atty. Schneider asked Mr. Goodfriend about State noise levels from trucks traveling on Route 173. Mr. Goodfriend said there are no State Standards, however, the Board should consider that in connection with an application for a variance. The Federal Government also exempts trucks traveling on public roads from such Standards.

Atty. Schneider displayed an Aerial Photograph of the Pilot site in Bordentown. It was marked Exhibit A-31. Atty. Janacek objected. Mr. Scott said Atty. Schneider was marking it for identification. Mr. Schneider asked Mr. Goodfriend a hypothetical question. Where were measurements taken at the Bordentown site? Mr. Goodfriend said he did not know. Atty. Schneider said he had no other questions.

Mr. Taibi had a question about noise decibels. Mr. Goodfriend explained. Mr. Taibi also asked if noise level violations would have to be corrected if a home was built on Route 173. Mr. Goodfriend indicated they would. Mr. Taibi asked if a correction could be sound barriers. Mr. Goodfriend said that was a possibility. Mr. Taibi asked about the residences between the Shell Station and the Foster Wheeler property and how that relates to the sound barrier issue. Mr. Goodfriend agreed it was an issue that should be looked at.

Mr. Kirkpatrick understood that truck traffic on the Site would increase. Mr. Goodfriend said that was correct. Mr. Kirkpatrick said properties to the east and north and portions to the west are used primarily for public outdoor recreation and wildlife management. He cited Ordinance Section 30-7 which says the Board shall not approve a project if it has appreciable harmful effect. Did Mr. Goodfriend think the project would have that effect? Mr. Goodfriend said he did not have enough information to answer the question.

Atty. Schneider asked for clarification of the barrier issue and whether there would be a need for a barrier south of I-78. Mr. Goodfriend said he had not opined about that issue.

Atty. Janacek asked Mr. Goodfriend if the sound levels generated by trucks, as set forth in his report of March 21, 2007, were accurate, as taken by the measurements. Mr. Goodfriend replied "Yes, sir". Mr. Janacek said he had no further questions.

Mr. Scott announced the Pilot Hearing was concluded for tonight. He understood Mr. Janacek had one more witness. The next Hearing will be June 28, 2007. Mr. Bischoff mentioned that because of the size of the crowd, he thought the June meeting could be held at the Municipal Building. Mr. Scott agreed. The Hearing was adjourned until June 28, 2007 and will be held at the Municipal Building. No further notice is required.

Approval of Minutes:

March 22, 2007: Mr. Kirkpatrick made a motion to approve the minutes of the March 22, 2007 meeting. Mr. Walchuk seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Walchuk, Mr. Martin, Mr. Lukasik, Mr. Taibi,
Mr. Scott, Mr. Bischoff

Abstain: Mr. Brandt

April 3, 2007 Workshop: Mr. Scott made a motion to approve the minutes of the April 3, 2007 Workshop. Mr. Lukasik seconded the motion.

Vote: All Ayes

April 26, 2007: Mr. Kirkpatrick made a motion to approve the minutes of the April 26, 2007 meeting. Mr. Scott seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Scott, Mr. Martin, Mr. Walchuk, Mr. Taibi
Mr. Bischoff

Abstain: Mr. Brandt, Mr. Lukasik

April 26, 2007 Executive Session: Mr. Walchuk made a motion to approve the minutes of the April 26, 2007 Executive Session. Mr. Kirkpatrick seconded the motion.

Vote: Ayes: Mr. Walchuk, Mr. Kirkpatrick, Mr. Martin, Mr. Taibi, Mr. Scott
Abstain: Mr. Brandt, Mr. Lukasik

There was no further business to discuss. The meeting was adjourned. (10:10 p.m.)

Grace A. Kocher, Secretary